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November 5, 2004

BY ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554

Re: ***Notice of Ex Parte Presentation*, Unbundled Access to Network Elements, WC Docket No. 04-313; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338**

Dear Ms. Dortch:

The Promoting Active Competition Everywhere ("PACE") Coalition, Broadview Networks, Grande Communications, and Talk America Inc. (collectively, the "Switching Coalition"), through their attorneys, file this notice of *ex parte* presentation. On November 4, 2004, Francie McComb of Talk America, Charlie Hunter of BridgeCom (a PACE Coalition member), Joe Gillan, representing the Switching Coalition, and Genevieve Morelli and I, of Kelley Drye & Warren LLP, met with Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin to discuss the issues raised in the above-referenced proceeding pertaining to unbundled local switching.

During the meeting, the Switching Coalition distributed the attached presentation, which summarizes the substance of the meeting. Please contact me at (202) 955-9766 if you have any questions regarding this filing.

Respectfully submitted,

Erin W. Emmott

Erin W. Emmott

cc: Daniel Gonzalez (via email)
Attachment

DC01/EMMOE/228743.1

WC Docket No. 04-313
CC Docket No. 01-338

Comments of the Unbundled Local Switching Coalition

PACE Coalition
Talk America Inc.
Broadview Networks
Grande Communications

November 4, 2004

The POTS Market is Distinct and Demands its Own Impairment Analysis

- The analog (POTS) telecom market is distinct from the advanced services market.
- Congress mandated that the Commission promote competition in both markets.

Relative Scale of Analog/Digital Markets
1996 and Today

Working POTS Loops	**Jan. 1, 1996**	**Dec. 31, 2003**
BellSouth	24,682,894	24,334,185
Qwest	15,347,150	15,607,156
SBC	52,509,805	53,345,041
Verizon	62,609,544	63,307,637
Digital Channels (VGE)		
BellSouth	3,522,816	116,860,737
Qwest	1,559,208	67,288,756
SBC	8,648,736	120,757,393
Verizon	Not Available	
Percent Digital		
BellSouth	12%	83%
Qwest	9%	81%
SBC	14%	69%
Verizon	Not Available	

The POTS Market is Distinct and Demands its Own Impairment Analysis (cont'd)

- POTS competition is not at odds with advanced services competition. In fact, POTS competition facilitates advanced services deployment.

- Analysis of the POTS market satisfies the requirement for a 'nuanced' impairment inquiry that considers "relevant characteristics and captur[es] significant variation."

State Records Validate the Commission's Impairment Finding

- No matter what definition of the geographic market is used, there simply is no significant mass (POTS) market competition using analog UNE-L.
  * The UNE-L mass market share is generally 1% (or less) and is declining.
- UNE-L CLECs as a group are focused on serving the digital (DS1 and higher) market.

Growth Rates by UNE-L Type

State	Analog	Digital
Illinois	-6%	49%
Indiana	-13%	129%
Kentucky	-52%	91%
South Carolina	-21%	78%
Tennessee	-20%	89%

- Only unbundled local switching affords CLECs the broad footprint needed for POTS competition. UNE-P based POTS competition is widespread and deep.
- The ILECs have not claimed the existence of a wholesale market for mass market local switching.

Intermodal Alternatives Define Separate Markets

- Wireless is positioned as a complement to wireline service, not a substitute.

  * Wireless is marketed in bundles with wireline service.

  * SBC and BellSouth acknowledge in the context of the Cingular/AT&T Wireless merger that wireless is not in the same product market as wireline service.

  * Census Bureau Survey shows very little wireless-for-wireline substitution (less than 1%), and the number of wireline-to-wireless ported numbers is less than 8% of all numbers.

  * The small business market is particularly unlikely to substitute wireless for wireline service (lack of extensions, reliability, cost, automatic yellow pages listings).

Intermodal Alternatives Define Separate Markets (cont'd)

- VoIP services have requirements and attributes that differentiate it from POTS service. VoIP services:
  - * require a broadband connection.
  - * generally do not operate during power outages.
  - * may not work with home security systems or fax machines.
  - * do not provide as reliable access to 911.

- The VoIP addressable market is a narrow segment of the residential market.

Competitive Share by Household Income – POTS CLECs

Competitive Measure	Average	Household Income			
		<$25K	$25-$50k	$50-75K	>$75K
CLEC Market Share	15%	18%	15%	12%	12%

The Addressable VoIP Market

Competitive Measure	Household Income			
	<$25K	$25-$50k	$50-75K	>$75K
Percentage of Households with High Speed Internet	8%	17%	35%	56%
	13%		46%	

- More than half of small businesses do not have a broadband connection. The Birch Telecom experience shows many customers cannot be reached by broadband (45%), with many smaller businesses (10 lines or less) uninterested in integrated voice/data services.

Defining the POTS Market

- The Commission should not artificially limit the POTS market to a set number of lines at a customer premise.

  * As acknowledged by Verizon in state impairment dockets, the *customer* is the best judge of which market (analog or digital) it belongs in.

  * There are valid cost, reliability and security reasons for a customer to prefer multiple analog voice lines to a DS-1 based service.

- If the Commission does adopt a "maximum line count" for the POTS market, the state records clearly establish that the average cost-based crossover between analog and DS-1 based services is 12 lines.

  * Two different methodologies (Sprint and AT&T), conducted across 19 separate states, produced a narrow range of crossovers.

  * Excluding the lowest estimate (Georgia at 9 lines), and the highest estimate (District of Columbia at 21), the 17 remaining states fall in the range of 10 to 14, with an average of 12.

Transition Plans and Rules Must Reflect Impairment Realities

- POTS competitors employ two business strategies (density and universal competition) which create different impairment profiles.

  * Some entrants rely on unbundled local switching to create the *customer density* needed to deploy facilities.

  * Other entrants rely on unbundled local switching to compete across the entire ILEC footprint as "*universal competitors*," a strategy that offers great benefit to the public, but which does not build density.

  * Congress intended to promote both strategies.

- Both strategies confront the hot-cut and backhaul impairments experienced when accessing individual ILEC loops.

- Carefully crafted unbundling rules must permit each strategy to continue, while addressing barriers to the deployment of "next generation" services.

The Density Approach

- Entrants require the ability to build density to justify the deployment of facilities.

- ALTS and the Switching Coalition have developed consistent estimates for when facilities deployment is justified.

  * The ALTS recommendation is 1,344 lines per CLEC per central office.

  * The Switching Coalition recommends 1,500 lines per CLEC per central office as a proxy for a 70% fill rate on the smallest scale SONET connection.

* Both ALTS and the Switching Coalition recommend transition plans for line migration once the line threshold is met that are patterned after the transition plan in the *Triennial Review Order*.

Universal Competitor Approach

- An entrant pursuing a "universal competitor" model is not focused on achieving density in limited wire centers, its goal is a widespread offering.

- The Commission could link access to unbundled local switching (in situations where the line density threshold is met) to carriers obtaining certification as Eligible Telecommunications Carriers (ETC) for the entire statewide operating territory of the RBOC.

  * This recommendation is limited to local switch unbundling by RBOCs (including all Verizon exchanges) and therefore does not raise any universal service issues involving rural ILECs.

  * Restricting switch unbundling to ETC carriers would address the D.C. Circuit's concern that CLECs may choose only to compete in low-cost/high-revenue areas.

  * ETC-based unbundling could be reviewed in three years to determine whether alternative means to universal competition are viable (i.e. no remaining impairments prevent widespread entry and competition).

The Basic Transition Plan Contained in the *Triennial Review Order* Should be Implemented Wherever Non-Impairment is Found

- Implementation of the basic transition plan contained in the *Triennial Review Order* is critical to avoid customer disruption and keep faith with Congress.

  * When the Commission adopted the transition plan, there were 10 million UNE-P lines. There are now 17 million UNE-P lines, nearly 60% more.

  * Although the ILECs appealed *how* the Commission's rules determined impairment, they did not appeal *what* occurred once a non-impairment finding was reached (i.e. the transition plan).

- The *Triennial Review Order* transition plan should be refined to address three deficiencies. The plan must:

  * Recognize the exceptions to any non-impairment finding that require continued unbundling;

  * Incorporate state commission review and approval of line migration implementation plans; and

  * Establish the processes needed for migration to next-generation services.

Refinements to the Transition Plan – <u>Exceptions that Require Continued Unbundling</u>

- Exceptions to a general finding of non-impairment where local switch unbundling should continue:

  * No collocation space. In any office where the ILEC cannot fulfill a request for collocation, the ILEC should be required to continue to offer unbundled local switching.

  * No facilities. There are a variety of circumstances where non-copper loop facilities (such as IDLC) are used to serve a customer, such that the ILEC is unable to provide a UNE-L arrangement with acceptable quality (i.e., no worse than the service quality the customer receives through the IDLC arrangement).

    - Where the ILEC cannot provide adequate loop facilities, unbundled local switching should continue to be available.

    - In wire centers with high concentrations of IDLC loops (> 50%), unbundled local switching should be available for all loops in that wire center, to simplify administration and provisioning.

  * EELs (including EELs with concentration) are not available at TELRIC rates.

Refinements to the Transition Plan – <u>Implementation Issues</u>

- In the *Triennial Review Order*, the Commission correctly recognized the importance of state commission oversight of any transition plan.

- Any transition plan must address the unique problems associated with migrating the embedded base of UNE-P lines.

  * Embedded-base migration creates the anomalous condition where customers must change networks to retain their service provider (the CLEC), while the ILEC can tell the customer that it can change providers (by returning to the ILEC) and avoid any network disruption.

  * The non-discrimination standard for embedded base migration (regarding cost and network effects) must be the same as for a UNE-P conversion.

- In order to make an informed and rational choice between migration of lines to alternative facilities and paying the just and reasonable rate to the BOC, the transition plan must also address the continued availability of local switching under §271.

Refinements to the Transition Plan –

Next Generation Services

- CLECs must be able to transition customers to next-generation (non-POTS) services as part of the transition plan.

- The ILEC must have fully implemented the capability to transition customers from analog-POTS circuits to any of the following next-generation architectures:

    * Home-run copper capable of supporting SDSL services at 1.544 mbps or better;

    * DS1 UNEs, alone or in combination with DS1 or DS3 UNE transport; and

    * PVC in DSL arrangements provided by the ILEC, interconnected to the CLEC's packet switches at the CLEC's designated location.

- If the ILEC is not able to support any of the above, then the circumstance should be treated as a "facilities not available" response, and the unbundling obligation should continue.

Summary of Analog-to-DS1 Crossover Estimates

Averaging Method	Average Crossover	Standard Deviation
Simple Average	12.1	2.6
Average with High and Low Eliminated	11.7	1.4

State	Estimated Crossover	Methodology	Source
District of Columbia	21	AT&T	Direct Testimony of Robert J. Kirchberger and E. Christopher Nurse, Formal Case No. 1024, at 5, 50-55 (filed Jan. 12, 2004).
Pennsylvania	14	AT&T[1]	Direct Testimony of Robert J. Kirchberger and E. Christopher Nurse, Docket No. I-00030099 (filed Jan. 9, 2004).
Illinois	14	Sprint	Direct Testimony of Daniel R. Gordon, Docket No. 03-0595, at 2 (filed Jan. 20, 2004).
Kansas	13	AT&T	Direct Testimony of John Finnegan, Docket No.03-GIMT-1063-GIT (filed Dec. 18, 2003).
Kentucky	13	Sprint	Rebuttal Testimony of Mark E. Argenbright, Case No. 2003-00379 (filed Apr. 2, 2004).
Texas	13	AT&T	Direct Testimony of Steven Turner, Docket No. 28607, at 45 (filed Feb. 9, 2003),
Florida	12	Sprint	Direct Testimony of Kent W. Dickerson, Docket 030851-TP (filed Dec. 4, 2003).
Louisiana	12	Sprint	Rebuttal Testimony of Mark E. Argenbright, Docket 27571 (filed Mar. 15, 2004).
New Jersey	12	AT&T	Direct Testimony of Robert J. Kirchberger and E. Christopher Nurse, BPU Docket TO030975, at 57 (Feb. 2, 2004).
Alabama	12	Sprint	Rebuttal Testimony of Mark E. Argenbright, Docket 29054-Phase II (filed Mar. 5, 2004).
Michigan	12	Sprint	Prefiled Direct Testimony of Daniel R. Gordon, Case No. U-13796, at 7 (filed Dec. 19, 2003).
Washington	12	AT&T	Rebuttal Testimony of Arleen M. Starr, Docket No. UT0033044, at 2 (Feb. 20, 2004).
North Carolina	10	Sprint	Rebuttal Testimony of Mark E. Argenbright, Docket P-100 Sub 133q (filed Feb. 16, 2004).
South Carolina	10	Sprint	Rebuttal Testimony of Mark E. Argenbright, Docket 2003-326-C (filed Mar. 12, 2004).
Tennessee	10	Sprint	Rebuttal Testimony of Mark E. Argenbright, Docket 03-00491 (filed Feb. 27, 2004).
Maryland	10	AT&T	Direct Testimony of Robert J. Kirchberger and E. Christopher Nurse, Case No. 8983, at 51 (filed Jan. 26, 2004).
Indiana	10	AT&T	Direct Testimony of Joseph Gillan, Cause No. 42500, at 9 (Apr. 2, 2004).
Missouri	10	Sprint	Direct Testimony of James M. Maples, Case No. TO-2004-0207, at 7 (filed Dec. 18, 2003).
Georgia	9	Sprint	Direct Testimony of Randy G. Farrar, Docket 17749-U (filed Dec. 23, 2003).

[1] AT&T's testimony estimates that the crossover is in the range of 14 to 16 lines. The table above and analysis only uses the lower of these estimates.